TAN SRI ABDUL RAHIM DATUK THAMBY CHIK

v.

JOHN MARCOM & ORS (NO 1)

HIGH COURT MALAYA, KUALA LUMPUR
RAHMAH HUSSAIN J
[CIVIL SUIT NO: S4-23-51-98]
19 OCTOBER 1999

CIVIL PROCEDURE: *Service - Foreign defendant - Failure to obtain leave of court to serve writ of summons on defendants - Rules of the High Court 1980, O. 6 & O. 11 - Whether proper service - Whether plaintiff could rely on procedure for service provided for in Printing Presses & Publications Act 1984 - Service on local agent of defendants - Whether sufficient*

The plaintiff commenced an action against the defendants for defamatory allegations in respect of the plaintiff published in an article in the TIME Magazine, Asian Edition ('TIME Magazine'), a magazine published and distributed in Malaysia. The defendants applied to set aside the action pursuant to O. 12 r. 7 Rules of the High Court 1980 ('RHC') and the Senior Assistant Registrar allowed the said application in respect of the 1st, 2nd and 3rd defendants ('the defendants'). Hence, the instant appeal by the plaintiff.

The plaintiff claimed that service of the writ of summons ('writ') on the local agent of the defendant appointed pursuant to the Printing Presses & Publications Act 1984 ('Act') was properly made pursuant to s. 23 of the Act.

The defendants submitted: (i) that the plaintiff did not comply with O. 6 and O. 11 of the Rules of the High Court 1980 ('RHC') as the plaintiff did not obtain leave of court to serve the writ on the defendants resident abroad; and (ii) that the plaintiff was not entitled to rely on s. 23 of Act to serve the writ on the local agent.

Held:

[1] The words "subject to the provisions of any written law" in O. 10 r. (1) RHC clearly envisage that other laws may provide for service outside the situation stated in the RHC. In the present case, the provisions relating to service were clearly provided for in the Act, *ie*, s. 6(3) and s. 23(a) of the Act. Therefore, O. 6 r. 1 and O. 11 RHC were not applicable.

[2] In view of the fact that the defendants had not disputed the publication permit issued by the Ministry of Home Affairs to allow for the publication of the TIME Magazine in Malaysia and the agent named in the said permit, all legal consequences which followed from the issuance of such a permit should apply, including service of legal proceedings on the agent appointed pursuant to the Act.

[2a] Section 6(3) of the Act did not require the newspaper to be "published in Singapore" as contended by the defendants. In any event, it was a well known fact which this court could take judicial notice of, that the TIME Magazine was published throughout Asia, including Malaysia, Singapore and Hong Kong.

[2b] It was also evident from the clear and unequivocal words of the Act that Parliament intended proprietors of foreign publications to be accountable for publications imported and circulated within the jurisdiction.

[3] Since the name and address of the publication permit holder was that of the 1st defendant and the defendants had replied the plaintiff's letter of demand on behalf of the publisher of The TIME Magazine, *ie*, the 2nd defendant, the plaintiff's submission that both were named as publishers "in an abundance of caution" was accepted. It followed that the service on the agent was good service.

[4] In respect of the 3rd defendant, he was named as the Chief Editor of TIME Magazine. He was an integral part of the 1st and 2nd defendants. Thus, he was being sued for his role in the said Magazine. It followed that the service on the agent on his behalf was proper service.

[Appeal allowed with costs.]

Legislation referred to:
Printing Presses & Publications Act 1984, ss. 6(3), 23(a)
Rules of the High Court 1980, O. 6(11), O. 10 r. 1, O. 11, O. 12 r. 7

For the defendants - L Cheah; M/s Shearn Delamore & Co
For the plaintiff - Firoz Hussein; M/s Puthucheary Firoz & Asmet

Reported by Usha Thiagarajah

JUDGMENT

Rahmah Hussain J:

This appeal arises from the decision of the Senior Assistant Registrar given on 15 January 1999, in allowing the application by the defendants to set aside the writ of summons in this action against the first, second and third defendants (hereinafter referred to collectively as 'the defendants') pursuant to O. 12 r. 7 Rules of the High Court 1980 (O. 12 r. 7 RHC).

The salient facts as contended by the plaintiff are as follows: The TIME Magazine, Asian Edition ('The TIME Magazine') is a magazine published and distributed in Malaysia. The first and second defendants are the publishers and/or proprietors of The TIME Magazine. The third defendant is the editor of The TIME Magazine. A publication permit has been issued to allow for the publication of The TIME Magazine in Malaysia [Exh. 'ARTC-7' – Encl. (15)]. The TIME Magazine issue of 15 June 1998 contained defamatory allegations in respect of the plaintiff in an article entitled "How Malaysia throttles dissent" (hereinafter referred to as 'the article'). A letter of demand dated 13 July 1998 was sent by the plaintiff's solicitors to the defendants in respect of the article [Exh. 'ARTC-1' – Encl. (15)]. By letter dated 16 July 1998 Messrs. Johnson Stokes & Master, a firm of solicitors in Hong Kong replied on behalf of 'the publisher of TIME Magazine, Asian Edition' which was stated in the said letter as being 'TIME Inc., Asia' and Donald Morrison, the Chief Editor of TIME Magazine, denying liability. [Exh. 'ARTC2' – Encl. (15)]

Following the letter from Messrs. Johnson Stokes & Master stating that the publisher is in fact TIME Inc., the plaintiff has sought to clarify the ambiguity as to whether the first defendant or Time Inc. is the publisher of The TIME Magazine. A letter dated 6 August 1998 was then sent to Messrs. Johnson Stokes & Master. In the same letter the plaintiff's solicitors informed Messrs. Johnson Stokes & Master that in the event no reply was received within the time stipulated then they would have to effect service pursuant to s. 23 of the Printing & Publications Act 1984 (hereinafter referred to as 'the Act'). However no reply was received. [Exh. 'ARTC4' – encl. (15)]

The plaintiff's solicitors also wrote repeatedly to Messrs. Johnson Stokes & Master inquiring as to whether the defendants had appointed agents in Malaysia to accept service of legal proceedings on their behalf but received no reply as well. [exhs. 'ARTC3' and 'ARTC4' – encl. (15)]. In the meantime the Ministry of Home Affairs supplied the plaintiff's solicitors with a copy of the publication permit issued to the magazine.

On 1 August 1999, the plaintiff filed a writ of summons and statement of claim against all four (4) defendants for defamation. Then on 17 September 1998 the plaintiff received a letter from the Ministry of Home Affairs confirming that Miss Christine Chong is the agent of TIME Magazine in Malaysia. Finally on 24 September 1998 the writ of summons and the statement of claim was served on Miss Christine Chong in her capacity as the representative of the defendants in Malaysia.

It is the plaintiff's contention that service on the agent appointed under s. 6(3) of the Act was properly made pursuant to s. 23 of the same Act. Now s. 23(a) of the same Act provides as follows:

> Any notice, document or other correspondence shall be deemed to be sufficiently communicated to the holder of a licence, permit or certificate if such notice, document or correspondence –
>
> (a) is personally served on the person in charge at the premises where the printing press is located, where the publication is published, or upon the agent appointed under subsection (3) of section 6;

While Section 6(3) of the same Act provides:

> The Minister may impose as a condition of the grant of a permit that the proprietor of the newspaper in Singapore shall establish and maintain a place of business within Malaysia or shall appoint persons within Malaysia authorised to accept service of any notice or legal process on behalf of the proprietor and shall furnish the Minister with, and cause to be published in such manner as the Minister may direct, a list containing the names and addresses of such persons.

Miss Christine Chong in her affidavit in reply does not deny that she is the agent named in the publishing permit issued by the Malaysian government [para. 4 – encl. (17)]. According to learned counsel for the plaintiff, the service of the legal process was valid, because the first and second defendants were named as proprietors of The TIME Magazine in the publication permit. And as for the third defendant, the writ was served through Miss Christine Chong on the basis that as editor of The TIME Magazine, he is an integral part of the first and second defendants and was sued for his role in The TIME Magazine.

On behalf of the defendants it is submitted that the service of the writ of summons and statement of claim on The TIME Magazine Services Sdn. Bhd. does not constitute a valid service on the defendants. They say that there has been a breach of Orders 6(1) and 11 of the Rules of the High Court 1980 ('RHC'), whereby the plaintiff has failed to obtain leave of the court to issue

the writ of summons against all four defendants, since they are resident abroad. It is further submitted that the plaintiff's failure to obtain leave of the court to issue the writ, for service out of court's jurisdiction has rendered the writ void and should be struck out.

With regard to service on the agent in Malaysia, it is the defendants' contention that the plaintiff's claim against them is not in relation to a contract and therefore O. 10 r. 2 RHC is not applicable. The permit issued by the Home Ministry is addressed to the first defendant and not to the second and third defendants. Since Miss Christine Chong is the agent of the first defendant, she cannot be deemed to be an agent for the second and third defendants. Therefore the defendants say, the plaintiff is not entitled to rely on s. 23 of the Act, to enable him to serve the writ on Miss Christine Chong or The TIME Magazine Services Sdn. Bhd. and thereby to consider such service as valid and proper.

As I see it, the defendants' grounds of appeal are essentially twofold. First, that the plaintiff has not complied with Orders 6 & 11 of the Rules of the High Court 1980, pertaining to the procedure for service on defendants resident abroad; second, that the plaintiff is not entitled to rely on s. 23 of the Printing Presses & Publications Act 1984, to serve the writ on the agent appointed pursuant to the Act in Malaysia.

As regards the first ground, let us now look at O. 10 r. (1) RHC which states:

> **Subject to the provisions of any written law** and these rules, a writ must be served personally on each Defendant or by sending it by prepaid A.R. registered post addressed to his last known address. [Emphasis added.]

In my opinion, the words "subject to the provisions of any written law" clearly envisage that other laws may provide for service outside the situation stated in the Rules of the High Court. In the present case, the provisions relating to service are clearly provided for in the Act, namely s. 23(a) and s. 6(3) of the Act. Therefore I am satisfied that O. 6 r. 1 and O. 11 of the RHC are not applicable in this case. That brings us to the defendants' second ground, that is, that the plaintiff is not entitled to rely on s. 23 of the Act, as the agent Miss Christine Chong is an agent for the first defendant only and that she cannot be deemed to be an agent for the second and third defendants. Furthermore s. 6(3) of the Act, does not provide for the appointment of an agent for the purpose of "legal process" when the newspaper is not published in Singapore.

I have this to say. In view of the fact that the defendants have not disputed Exh. 'ARTC7' – encl. (15) which is a publication permit (Singapore) and that Miss Christine Chong in her second affidavit sworn on 3 December 1998 [at

para. 4 – encl. (17)], has acknowledged that she is the agent named in the publication permit, it is my considered opinion that a publication permit (Singapore) was issued to The TIME Magazine and that all legal consequences which follow from the issuance of such a permit should apply, including service of legal proceedings on the agent appointed pursuant to the Act.

Furthermore, there is nothing in s. 6(3) of the Act to require the newspaper to be "published in Singapore" as contended by the defendants. In any event, it is a well known fact, which this Court can take judicial notice of, that The TIME Magazine, Asian Edition, is published throughout Asia, including Malaysia, Singapore and Hong Kong.

It is also evident from the clear and unequivocal words of the Printing Presses & Publications Act 1984 that Parliament intended the proprietors of foreign publications to be accountable for publications which are imported and circulated within the jurisdiction.

In respect of service on the second defendant, since the name and address of the permit holder on Exh. 'ARTC7' – Encl. (15) is stated as "John Marcom, Time Incorporated", and that the defendants' solicitors in their letter dated 16 July 1998 [Exh. 'ARTC2' – Encl. (15)] had replied on behalf of the publisher of The TIME Magazine, Asian Edition which was stated in the said letter as being "Time Inc., Asia" and Donald Morrison (third defendant) as the Chief Editor of The TIME Magazine, I accept learned counsel for the plaintiff's submission that "in an abundance of caution" they have named both John Marcom and Time Inc., Asia as being the publishers of The TIME Magazine. As such I am satisfied that the service effected on the agent Miss Christine Chong is good service as well.

In respect of service on the third defendant, again, from the same letter [Exh. 'ARTC2'] the defendants have named him as the "Chief Editor of The TIME Magazine". Therefore to my mind, since he is an integral part of the first and second defendants, he is being sued for his role in The TIME Magazine. As such I am also satisfied that service on the agent Miss Christine Chong on his behalf is also proper service.

In the circumstances, I was satisfied that the plaintiff has complied with the requirements as stipulated in the Printing Presses & Publications Act 1984 for the proper service of legal process. As such I allowed the plaintiff's appeal with costs.